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**IN THE THIRD CIRCUIT COURT OF THE TWENTIETH JUDICIAL
DISTRICT FOR DAVIDSON COUNTY, TENNESSEE, AT NASHVILLE**

In Re the State of Tennessee Office)
of Attorney General and Reporter's)
Investigation of: MARCUS JONES,)
individually and doing business as)
JONES MEMORIALS and/or HALF)
OFF STONES, and the owners, officers,)
directors, agents, assigns, representatives)
and employees of MARCUS JONES,)
JONES MEMORIALS and)
HALF OFF STONES.)

K. Norman D.C.
No. 08C3494

**MOTION/PETITION FOR ORDER REQUIRING DEFENDANT MARCUS JONES TO
SHOW CAUSE WHY HE SHOULD NOT BE HELD IN CIVIL CONTEMPT OF COURT
FOR HIS WILLFUL FAILURE TO COMPLY WITH THIS COURT'S JANUARY 16,
2009 ORAL RULING AND FOR INJUNCTIVE AND OTHER RELIEF AUTHORIZED
BY THE CONSUMER PROTECTION ACT**

This MOTION/PETITION(hereinafter "Petition") is brought pursuant to Tenn. Code Ann. §§ 8-6-109, 29-9-102, 47-18-106(e), 47-18-108, 47-18-114, and all common law powers and duties of the Attorney General and those common law and equitable powers issued to this Honorable Court, the State of Tennessee, by and through Robert E. Cooper Jr., the Attorney General and Reporter for the State of Tennessee, on behalf of Mary Clement, the Director of the Division of Consumer Affairs of the Tennessee Department of Commerce and Insurance.

The State petitions this Honorable Court to issue an order requiring Defendant Jones, individually and on behalf of the other Defendants, to show cause why he has not complied with the Court's January 16, 2009 oral order and directive that Defendant Jones provide certain specified information and documents, requested by the States' Request For Consumer Protection Information (hereinafter "RCPI") which was issued June 25, 2008 and was served September 18,

2008, or, in the alternative, requiring Defendant Marcus Jones, on behalf of himself and the other Defendants, to provide competent evidence that all actions required by the Court's January 16, 2009 Oral Ruling, and subsequent written order entered January 29, 2009 (hereinafter "Order"), have been performed by Defendant Jones, or on behalf of Defendant Jones and the other Defendants.

Further, pursuant to Tenn. Code Ann. § 29-9-102, the State moves this Court to hold Defendants in willful civil contempt of this Court's Oral Ruling and Order.

Additionally, pursuant to the powers granted to this Honorable Court under the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. § 47-18-101 *et seq.* ("Consumer Act") and specifically set forth in §§ 47-18-106(e) and 47-18-108 and in order to ensure the purposes of the Consumer Act set forth at § 47-18-102 are fulfilled and the required liberal construction under § 47-18-115, that this Court issue such other orders as it deems necessary to bring Defendants in compliance with the Court's Order and requiring Defendant to fully comply with the RCPI, including but not limited to finding Defendants' failure to comply with the RCPI, constitutes a violation of the Tennessee Consumer Protection Act in that it is a *per se* violation of the Consumer Act (§ 47-18-104(a), (b) and (b)(27)) to fail to comply with a RCPI after an Order requiring production has been issued and as such is subject to all penalties set forth in the Consumer Act, including but not limited to the imposition of remedial civil penalties, an award of attorneys' fees and other orders as deemed necessary by the court to protect consumers and legitimate businesses from unfair and deceptive acts and practices occurring in whole or in part in the State of Tennessee.

The instant Petition is made based upon evidence of a continuing and willful breach of the Order and the real threat of continued willful breaches, as evidenced by the fact that, since the original date of September 29, 2008, set by the RCPI for the production of these documents and information, not a single piece of information or a single document has been produced to the

State, despite Defendant Jones having had ample time and opportunity to do so prior to the necessity of filing this Petition.

FACTS

In support of this Petition, the Attorney General cites the findings of this Court in its January 29, 2009 “Order Granting The State’s Amended Motion / Petition For An Order To Compel Compliance With The State’s Request For Consumer Protection Information” which is fully incorporated herein, and shows as follows:

- (1) The State of Tennessee, by and through the Attorney General and Reporter, Robert E. Cooper, Jr., issued a valid “Request for Consumer Protection Information” (“RCPI”) to Defendants, pursuant to the provisions of Tenn. Code Ann. § 47-18-106 attached hereto as Exhibit A.
- (2) Defendant Jones Memorials is a sole proprietorship owned and operated by Defendant Marcus Jones and is headquartered in Nashville, Tennessee at 3918 Dickerson Road, Suite 108. Defendants Marcus Jones and Jones Memorials are generally engaged in the business of selling headstones, grave markers and other cemetery items, primarily over the Internet to consumers.
- (3) The Tennessee Division of Consumer Affairs has received consumer complaints against Defendants.
- (4) The Better Business Bureau of Middle Tennessee has processed consumer complaints filed against Defendants and has listed Defendants as having an unsatisfactory record.
- (5) Defendant Marcus Jones, on behalf of all Defendants, was properly served with the Request because he signed the United States Postal Service receipt for delivery of the RCPI on September 18, 2008. The Request, which is attached hereto as Exhibit A and

incorporated by reference, required Defendants to produce certain documentary materials and information to the Attorney General by no later than September 29, 2008.

- (6) Defendants failed to produce any documents or information on September 29, 2008 as required by the Request.
- (7) Marcus Jones did not appear and provide sworn testimony as required by the Request on October 1, 2008.
- (8) Defendant Marcus Jones did not notify the State that he would not appear as required, resulting in the State having contracted with a court reporter to be present to take Defendant Jones' testimony on the scheduled date. The cost of the court reporter appearing for that scheduled sworn statement was Ninety Dollars and 00/100 (\$90.00).
- (9) The State then filed a Petition for an Order to Compel Compliance with this Court on October 22, 2008, and an amended Motion/Petition for an Order to Compel Compliance with this Court on October 29, 2008 (collectively referred to as the "State's Motion").
- (10) On November 6, 2008, Marcus Jones was hand-delivered additional copies of the RCPI, original Petition to Compel Compliance, the Amended Motion/Petition to Compel Compliance and the Notice of Hearing for November 14, 2008 by a paralegal with the State.
- (11) On November 13, 2008, the State reached an agreement with Defendant Marcus Jones, and his then attorney of record, Robert Vaughn, that all of the documents and information requested by the RCPI would be produced as soon as Mr. Vaughn had a chance to review them.

- (12) Based upon this agreement, the State agreed to reschedule the hearing before this Court originally scheduled for November 14, 2008, until January 9, 2009, and this Court was so notified in open court on November 14, 2008.
- (13) At the request of Defendant's counsel, the hearing was once again rescheduled for January 16, 2009, again based upon the representation that Defendant Jones would produce the documents to the State prior to the end of 2008.
- (14) On December 8, 2008, Defendant's counsel called Assistant Attorney General John Smith and advised that he no longer represented Defendant Marcus Jones or the other Defendants.
- (15) On December 8, 2008 Defendant Marcus Jones, acting in a *pro se* capacity, represented to Assistant Attorney General John Smith that he would produce the documents on December 12, 2008.
- (16) On December 15, 2008, Defendant Marcus Jones called Assistant Attorney General John Smith and stated that he had an automobile accident on December 12, 2008, while bringing the requested documents to the State. Defendant Marcus Jones promised to produce those documents to the State by the close of business on December 19, 2008.
- (17) No documents were provided to the State by close of business on December 19, 2008.
- (18) Further, at the time of the hearing on January 16, 2009, no documents or other information were provided to the Attorney General's Office in response to the RCPI.
- (19) No responsive pleadings were filed by Defendants with the Court prior to the hearing on January 16, 2009.

- (20) Defendant Marcus Jones was in Court at the hearing on January 16, 2009, and at the request of the State, Defendant Jones was allowed to address the Court whereupon Defendant Marcus Jones made a statement in open court.
- (21) Defendant Jones, acting *pro se*, advised the Court that he still had not delivered a single document or any information to the State, but that he was ready to produce to the State documents that he had with him at Court.
- (22) General Smith then asked the Court's permission to ask Defendant Jones a question and permission was granted.
- (23) General Smith asked if Defendant Jones had with him and was prepared to present to the State all of the documents requested in the State's RCPI.
- (24) Defendant Jones answered General Smith's question by stating that he was not prepared to deliver all of the documents and information requested by the RCPI, to the State.
- (25) In open court on January 16, 2009, this Court orally ordered and directed Defendant Jones to produce the documents and information requested in the State's RCPI, by no later than Noon (12:00 p.m.), January 16, 2009. The Court further ordered that the giving of sworn testimony by Defendant Jones, requested by the RCPI, was to be scheduled for a reasonable time following the actual production of said information and documents by Defendant Jones to the State.
- (26) During the hearing on January 16, 2009, this Court expressly warned Defendant Jones that a failure to comply with the Court's Order would be considered to be a contempt of court.
- (27) Defendant Jones walked out of the Court without presenting to the State the documents that he had with him, and refused to present such documents when asked to do so by

General Smith in the hallway outside the Court, alleging that General Smith and the Court had conspired against him and he would just file bankruptcy.

Further, in support of this Petition, the Attorney General would state, upon information and belief, as follows:

- (28) The Court has subsequently issued an order entered on January 29, 2009, attached hereto as Exhibit B, incorporating the Court's oral Order.
- (29) This Court exercises jurisdiction over the subject matter of this Petition and the parties pursuant to Tenn. Code Ann. §§ 47-18-108 and 47-18-114. The Defendants engage in and/or have engaged in consumer transactions affecting the conduct of commerce and trade in Tennessee by advertising and offering for sale grave markers and other assorted memorials on their websites and their storefront location at 3918 Dickerson Pike, Suite 108, Nashville, TN. The Defendants promote their goods via the Internet and take orders by telephone, via the Internet, via the mail and in person and receive payments from consumers from across the country.
- (30) Venue is proper in Davidson County pursuant to Tenn. Code Ann. § 47-18-108(a)(3) because it is the county where the unfair and deceptive acts and practices alleged in this Petition have occurred, are occurring, or are about to occur, is the principal place of business for Defendants, and is the county where Defendant Marcus Jones resides.
- (31) Defendants, by and through Defendant Marcus Jones, did not produce, nor has anyone else produced on Defendants' behalf, the documents and information required by the RCPI and the Court's Order as of the deadline set by the Court of "Noon" (12:00 p.m.) on January 16, 2009.

- (32) As of the date of the filing of this Petition, Defendant Jones has not produced, nor has anyone else produced on his behalf or on behalf of the other Defendants, any information and/or documents required by the RCPI and by the Order of this Court.
- (33) Defendant Jones represented at the January 16, 2009 hearing that he did not have all of the information and documents required to be produced by the RCPI, and that he had the right to have an attorney prior to being required to produce any information or documents.
- (34) At the January 16, 2009 hearing, Defendant Jones was in possession of and displayed a stack of documents that he stated were a portion of the documents requested by the RCPI. Defendant Jones did not produce, and in fact refused to produce these documents to the State at the conclusion of the hearing on January 16, 2009.
- (35) The Court pointed out that Defendant Jones had been represented by Mr. Vaughn, Defendant Jones stated that he never paid Mr. Vaughn and that Mr. Vaughn took it upon himself to represent Defendant Jones without Defendant Jones' permission.
- (36) The Court pointed out that on behalf of the Defendants, Mr. Vaughn had called the Court and General Smith and had on behalf of Defendant Jones negotiated a rescheduling of the hearing originally scheduled for November 14, 2008, and that the Defendants, including Defendant Jones had accepted the benefits of that negotiation without comment or protest.
- (37) The State's investigation continues to be impeded, hampered and delayed due to Defendants' failure to comply with the lawfully issued RCPI and with this Court's specific Orders.
- (38) The State has incurred attorneys' fees and costs in preparing for Defendant's sworn testimony on October 1, 2008, its prior Motion and appearing at the hearing on January

16, 2009. The total amount of those reasonable attorneys' fees and costs including the court reporter fees is Four Thousand Two Hundred Dollars (\$4,200.00).

- (39) The State has incurred additional attorneys' fees and costs in preparing this Petition, Proposed Order, the Motion for Expedited Hearing and Proposed Order. The total amount of these reasonable attorneys' fees and costs is One Thousand Seven Hundred Dollars (\$1,700.00).
- (40) The State will incur additional attorneys' fees and costs in attending the hearing on the Petition and Motion to Expedite.
- (41) It is an unfair or deceptive act or practice for Defendants to fail to provide documents and information pursuant to a lawfully issued RCPI especially after being so ordered to provide all such documents, testimony and information pursuant to Order of this Court.
- (42) It impedes the State's investigation and the State's protection of consumers and legitimate businesses when Defendants fail to cooperate with a lawfully issued RCPI to investigate possible unfair and deceptive acts and practices operating in whole or in part from the State of Tennessee.
- (43) This Court issued an injunction in its order prohibiting Defendant from further avoiding, evading, preventing compliance, in whole or in part with the State's civil investigation and prohibited and enjoined Defendants from removing from any place, concealing, withholding, destroying, mutilating, falsifying or by any means altering any documentary material in the possession of the Defendants, requested by the RCPI and otherwise related in any way to the State's investigation, and as such the penalties set forth in the Tennessee Consumer Protection Act are appropriate for assessment by this Honorable Court.

PRAYER FOR RELIEF

For the above stated reasons, the State of Tennessee, ex rel. Robert E. Cooper, Jr., Attorney General and Reporter, pursuant to the Consumer Act, the Attorney General's general statutory authority, the Attorney General's authority at common law, and this Court's common law and equitable powers, applies, prays and moves this Court for the following relief:

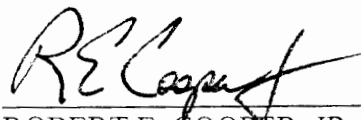
- A. That this Petition be filed without cost bond as provided by Tennessee Code Ann. §§ 20-13-101, 47-18-108 and 47-18-116 and no court costs or litigation fees or costs of any sort be taxed against the State pursuant to Tenn. Code Ann. § 47-18-116.
- B. That process issue and be served upon Defendants requiring Defendants to appear and answer this Petition;
- C. That this Court issue an Order requiring Defendant Marcus Jones to appear before this Court and show good and sufficient cause to this Court why he should not be held in civil contempt of this Court for his willful and continuing refusal and failure to comply with this Court's January 16, 2009 oral ruling and Order;
- D. That this Court adjudge and decree that by Defendants failure to comply with a lawfully issued RCPI and a subsequently issued Order directing Defendants to so comply, Defendants have engaged in the aforementioned acts or practices which violate the Tennessee Consumer Protection Act of 1977;
- E. That this Court adjudge and decree that Defendants are in civil contempt until such time as Defendants have fully and completely complied with the information and document production portion of the RCPI;
- F. That this Court order Defendant Marcus Jones to appear at the Office of the Attorney General and Reporter for the purpose of giving testimony as required by the RCPI on a

date, to be provided to Defendants by the Attorney General, that is within thirty (30) days of the date Defendants fully and completely comply with the information and document production portion of the RCPI;

- G. That this Court shall assert its continuing jurisdiction to address further Complaints and Petitions by the State relating to Defendants' acts or practices after the State has had the opportunity to review the information required by the RCPI and this Court's Order;
- H. That pursuant to Tenn. Code Ann. §§ 47-18-106(e), 47-18-108(a)(1), (a)(4) and (b)(1), this Court continue to temporarily enjoin Defendants from further avoiding, evading, preventing, compliance, in whole or in part with the State's investigation and the State's RCPI issued June 25, 2008, and prohibit and enjoin Defendants from removing from any place, concealing, withholding, destroying, mutilating, falsifying or by any means altering any documentary material in the possession of the Defendants, requested by the RCPI and otherwise related in any way to the State's investigation. Further, Defendants shall continue to be enjoined and required to maintain all records in a secure location, identified to the Court, and such orders and injunctions be issued without bond pursuant to Tenn. Code Ann. § 47-18-108.
- I. That this Court enter an order against Defendants and in favor of the State for reasonable costs and expenses of the investigation and prosecution of the Defendants' actions, including attorneys' fees, expert costs, and other witness fees, as provided by Tenn. Code Ann. §§ 47-18-108(a)(5) and (b)(4) and the Court's equitable powers. Further, that the Court order that such sums shall be subject to immediate execution and garnishment and collection costs and fees and said attorneys fees shall be provided by certified check made payable to the "Treasurer, State of Tennessee – Attorney General" and may be used for consumer protection purposes or other lawful purpose at the sole discretion of the Attorney General;

- J. That this Court enter an order against Defendants and in favor of the State, subject to immediate execution and garnishment and collection costs and fees for an additional remedial civil penalty assessment of One Thousand Dollars (\$1,000.00). Said penalty shall be provided by a certified check made payable to the “Treasurer, State of Tennessee – Civil Penalty” delivered to the Attorney General by no later than March 1, 2009;
- K. That this Court grant Plaintiff such other and further relief as this Court deems just and proper.

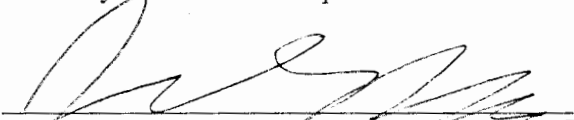
RESPECTFULLY SUBMITTED,



ROBERT E. COOPER, JR.

B.P.R. No. 010934

Attorney General and Reporter



JOHN S. SMITH, III

B.P.R. No. 023392

Assistant Attorney General

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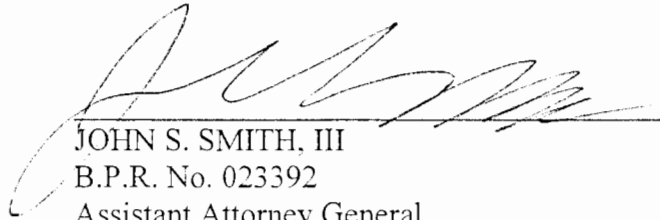
Phone: (615) 532-3382

Facsimile: (615) 532-2910

E-mail: John.Smith@ag.tn.gov

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing document has been sent by Certified Mail, Return Receipt Requested to MARCUS JONES, Individually and d.b.a. Jones Memorials/Half Off Stones, 3311 Hawkwood Lane, Nashville, TN 37207-2112 on this 6th day of February, 2009, and that a true and exact copy of the foregoing document has been given to an Investigator for the Office of the Attorney General for purposes of hand delivering said document to MARCUS JONES, Individually and d.b.a. Jones Memorials/Half Off Stones, at 3311 Hawkwood Lane, Nashville, TN 37207-2112, or wherever MARCUS JONES may be located.



JOHN S. SMITH, III

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